

IN THE MATTER OF	:	BEFORE THE
THE KANE COMPANY	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 07-023V

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DECISION AND ORDER

On November 13, 2007, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of The Kane Company for a variance to reduce the 30-foot parking use setback from a public street right-of-way to 12 feet for 13 parking spaces in an M-1 (Manufacturing: Light) zoning district, filed pursuant to Section 122.D.2.a of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Richard B. Talkin, Esquire, represented the property owner. William Auchter and Tim Miller testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property (the "Property"), currently known as 6500 Kane Way, is located in the 1st Election District on the east side of the I-95 right-of-way ("ROW") where it intersects MD 103. The Property is identified on Tax Map 37, Grid 16, as Parcel 174.

2. The Property is a roughly rectangular-shaped lot about 163 feet wide and 1,400 feet deep. The 6.83-acre, generally level Property is improved with an 81,795 square foot, three-story warehouse situated about 630 feet from Md 103. The warehouse's three-story back section is used as offices. In 1968, the Property was rezoned from R-20 (Residential: Single) to B-2 (Business: General) (ZB 500).

3. A 30-foot private road runs from MD 103 to a small parking lot and truck bay area situated just to the front of the warehouse and continues along the warehouse's western façade toward the rear of the Property, passing multiple motor vehicle parking space areas along the eastern property line. In 1991, 2000, and 2002, the County granted the Petitioner and others three variances to reduce the parking space use setback from 30 feet to 12 feet to accommodate these parking spaces (BA 91-28V, BA 99-58V, and BA 02-50V).

4. Vicinal Properties: All adjoining properties are also M-1. Parcel 134 to the Property's north and northeast is a Department of Public Works, State Highway Administration-owned wooded area adjacent to the MD 100's intersection with I-95. To the east is the Meadowridge Memorial Park parcel, which fronts on US 1 some distance to the east. Across MD 103 to the southeast is a lot improved with a single-family detached dwelling, and to the southwest, a wooded area. The I-95 ROW adjoins the Property's entire west lot line.

5. Roads: MD 103 in this area has two travel lanes and about 20-24 feet of paving within a variable ROW. In the immediate area of the Property, MD 103 is widened along the southbound lane to achieve an ultimate 80-foot ROW. The posted speed limit is 40 MPH. When the County evaluated the Site Development Plan for the existing driveway, it approved the sight distance measurements for the existing driveway entrance as adequate. The requested variance in this case

will not alter the entrance or approved sight distance measurements. The traffic volume on MD 103 west of US 1 was 8,975 ADT (average daily trips) in 2005.

6. The General Plan's 2000-2020 Policies Map designates the Property as an Employment Areas and Redevelopment corridor and the Plan's Transportation Map depicts MD 103 as a minor arterial.

7. The Petitioner, The Kane Company, is requesting a variance to reduce the 30-foot parking use setback from an external public street ROW to 12 feet for 13 parking spaces. The proposed spaces would continue the parking spaces approved under the 2002 variance.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides that a variance may be granted only if all of the following determinations are made:

- (1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.
- (2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.
- (3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.
- (4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance complies with Section 130.B.2.a(1) through (4), and therefore may be granted.

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

In this case, the Property's elongated shape and narrowness is exceptional relative to neighboring M-1 properties. The Property also has a unique physical location in that it borders ROW along three lot lines. I therefore conclude the Property's narrowness and physical location are unique physical conditions causing the Petitioner practical difficulties in complying with the 30-foot structure setback requirement, in accordance with Section 130.B.2.a(1).

2. The encroaching parking spaces would be situated about 100 feet from the northbound I-95 exit lane, but they would not be visible from either I-95 or the exit ramp because they will be sited below the highway elevation. They will also be physically separated from MD 103 by several hundred feet and the 12-foot setback could be buffered by appropriate landscaping. So

buffered, the granting of the variance will not alter the essential character of the neighborhood or district in which the Property is located, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. The practical difficulty in complying strictly with the setback regulation arises from the Property's shape and physical location and was not created by the Petitioner, in accordance with Section 130.B.2.a(3).

4. The Petitioner has reasonably balanced the encroachment caused by the proposed parking spaces by aligning the proposed parking spaces with the encroachment approved through the 2002 variance. The setback cannot be reduced because the spaces would intrude into the drive aisle, which accesses the back office section of the warehouse. Within the intent and purpose of the regulations, then, the variance is the minimum variance necessary to afford relief, in accordance with Section 130.B.2.a(4).

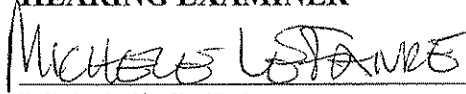
ORDER

Based upon the foregoing, it is this 11th day of December 2007, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Petition of The Kane Company for a variance to reduce the 30-foot parking use setback from an external street public-right-of-way in an M-1 (Manufacturing: Light) zoning district to 12 feet for 13 parking spaces located along the west side of the Property is hereby **GRANTED;**

Provided, however, that the variance will apply only to the 13 parking spaces being requested and not to any new structures, uses, or change in uses on the subject property or to any additions thereto.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**


Michele L. LeFaivre

Date Mailed: 12/12/07

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.